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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Vincent Fischetti

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2384

23565

7590

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EXAMINER

MARX, IRENE

ART UNIT

PAPER NUMBER

1651

MAIL DATE

DELIVERY MODE

07/22/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Art Unit: 1651

Note:

The proposed amendment raises new issues that would require further consideration and/or search with respect to the extensive amendments to claims 17 to and 23 to read "synergy as defined as a pneumococcal, respectively *Streptococcus pneumoniae*, bacterial titer reduction of the combination of at least"... , as well as the illegible symbol between "at least" and "2 log<sub>10</sub>", and the amendment to add "at the same concentration" including issues under 35 U.S.C § 112 and of new matter.

New issues that would require further consideration and/or search are raised by the amendments to add "each" in claim 30.

The amendment presented fails to comply with the **Revised Amendment Format 37 CFR 1.121** . Claims 17 and 23 are amended without the appropriate indication of brackets, strike-throughs and/or underlining. The improper amendment resulted in an improper symbol between "at least" and "2 log<sub>10</sub>" at lines 7, wherein the "larger than" part appears struck out, but the "-", remains.

### ***Response to Arguments***

Applicant's arguments have been fully considered to the extent that they pertain to the claims now of record but they are not deemed to be persuasive.

It should be kept in mind that applicant cannot, as a matter of right, amend any finally rejected claims, add new claims after a final rejection (see **37 CFR 1.116**) or reinstate previously canceled claims.

Except where an amendment merely cancels claims, adopts examiner suggestions, removes issues for appeal, or in some other way requires only a cursory review by the examiner, compliance with the requirement of a showing under **37 CFR 1.116(b)(3)** is expected in all amendments after final rejection, i.e., " An amendment touching the merits of the application or patent under reexamination may be admitted upon a showing of good and sufficient reasons why the amendment is necessary and was not earlier presented."

The arguments are directed to claims that are not entered and are not persuasive of error in the rejections made.

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Therefore the rejections are deemed proper and are adhered to.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (571) 272-0919. The examiner can normally be reached on M-F (6:30-3:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300 .

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Irene Marx/  
Primary Examiner  
Art Unit 1651